Civil Writ Petition No.2654/2005
Dy.Director National Sample Survey Organisation
Vs. Central Govt.Indl. Tribunal & Nandlal

Date of Order ::: 07/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Gaurav Jain, for petitioners
Mr. Manu Bhargava for respondent workman

At joint consent of the parties, this writ petition is heard finally and disposed of at admission stage.

Instant petition has been filed against Award dt.13/09/04 passed by Central Govt. Industrial Tribunal, Jaipur ("**Tribunal**"), whereby workman respondent was reinstated in service with 50% back wages.

Respondent workman was appointed purely on daily wages basis as Peon and indisputably has worked fore more than 240 days in service in preceding 12 months under petitioner-employer. As per pleadings on record, workman joined service on 03/05/99 and worked upto 08/02/2000 when his services were terminated, against which an industrial dispute was raised. Period of his working indicates 240 days service as required U/s 25-B of Industrial Disputes Act, 1947 ("**the Act**").

The Tribunal after taking into consideration material recorded finding that despite workman completed more than 240 days' service, petitioner employer failed to comply with mandatory requirement of S.25-F of the Act, as a consequence whereof, workman is entitled to reinstatement in service so also 50% back

wages. Hence this petition.

Counsel for petitioner contends that appointment of workman was made in place of Mahesh Chand, who proceeded on leave and immediately when he finally joined service, services of workman were dispensed with so, there was reasonable justification for terminating his services and even though he completed 240 days' service, very Award for reinstatement in service with 50% back wages is uncalled for, since respondent workman cannot be retained in service in aforesaid administrative exigency.

Per contra, Counsel for respondent workman contends that no distinction has been made under the statute in examining nature of appointment offered to workman while computing continuous period of 240 days' service, in such circumstances, once this fact remains uncontroverted that compliance of S.25-F of the Act was not made, reinstatement with back wages is a consequence thereto and no error has been committed by the Tribunal in passing impugned Award.

I have considered rival contentions of both the parties and perused material on record. The Tribunal has taken note of actual period of services rendered by respondent workman with petitioner employer and recorded finding of fact that he worked for more than 240 days and petitioner indisputably did not comply with provisions of S.25-F of the Act before giving effect to termination of workman from service. I do not find any error in the finding recorded by

Tribunal (supra) and find no justification to interfere with Award of reinstatement with continuity in service.

However, as regards Award of 50% back wages, I find that there was no material placed by workman on record, except an affidavit; and that apart, looking to the nature of appointment and span of service rendered by workman with petitioner, so also explanation furnished by petitioner employer, as a consequence whereof, I find no justification to affirm award of back wages.

Consequently, this writ petition is partly allowed and impugned Award with regard to 50% back wages is set aside and rest of it stands affirmed. No order as to costs. Accordingly, stay petition No.2367/05 also stands disposed of.

(Ajay Rastogi), J.

K.Khatri/2654CWP2005.